

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TANIELLE SHURNEY,
Plaintiff

v. CIVIL ACTION NO. 05-196 ERIE

SCOTT ENTERPRISES, INC.,
et al.,
Defendants

STATUS CONFERENCE

Proceedings held before the HONORABLE
SEAN J. McLAUGHLIN, U.S. District Judge,
in Judge's Chambers, U.S. Courthouse, Erie,
Pennsylvania, on Monday, November 21, 2005.

APPEARANCES:

A.J. ADAMS, Esquire, appearing on behalf of
the Plaintiff.

CHRISTIAN D. BAREFORD, Esquire, Deputy Attorney
General, appearing on behalf of Defendant Sean
Pierce.

GARY D. BAX, Esquire, appearing on behalf of
Defendant Scott's Splash Lagoon, Inc.

GERALD J. HUTTON, Esquire, appearing on behalf
of Defendant Scott's Econo Inn, Inc.

Ronald J. Bench, RMR - Official Court Reporter

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1 P R O C E E D I N G S

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3 (Whereupon, the proceedings began at 9:10 a.m., on
4 Monday, November 21, 2005, in Judge's Chambers.)

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6 THE COURT: All right. We're here on a status
7 conference at 05-196. It looks like you folks have agreed on a
8 proposed discovery schedule. Off the record.

9 (Discussion held off the record.)

10 THE COURT: Let me cut right to the chase here.

11 Your discovery is going to run through March 3rd. Plaintiff's
12 narrative is going to be due on March 20th. Any motions, any
13 dispositive motions would be due also on March 20th.

14 Defendants' narratives would be due on April the 10th. And a
15 response to any motion for summary judgment would be due on
16 April the 10th. Off the record.

17 (Discussion held off the record.)

18 THE COURT: Refreshing my recollection, and then
19 I'll let you folks get back to your offices. This is a case
20 where there was a registration with a stolen credit card?

21 MR. ADAMS: We don't know if this was a stolen
22 credit card. The reservations were made by a third party.

23 THE COURT: On her behalf?

24 MR. ADAMS: On her behalf and other minors. She
25 showed up and gave her real name and address, her driver's

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1 license. They said it was a stolen credit card. She denied
2 it. She obviously came through the public defender's system.
3 She said the same thing to my investigator. We did have a
4 hearing, a preliminary hearing, the charges were dismissed.
5 Didn't have anything to do with the scheduling of the
6 reservation, and so Judge Dwyer threw it out.

7 THE COURT: To this day do we know?

8 MR. BAX: We know, your Honor. I think we're going

9 to be able to establish that a woman identified herself as

10 Tanielle Shurney. She called up Scott's reservation center and

11 placed a reservation for Econo Lodge and Scott's Splash Lagoon.

12 When she was asked for a credit card --

13 THE COURT: Telephonically?

14 MR. BAX: Yes. So a woman who has identified

15 herself as Tanielle Shurney calls Scott's Splash Lagoon. When

16 she is asked for a credit card, she says wait a minute, I'll

17 put my sister on the line. Her sister then gives a credit card

18 number. And then Tanielle gets back on the line and says when

19 I get there, I don't want anybody charging anything on that

20 credit card. And then Tanielle Shurney --

21 THE COURT: Who says that I don't want anybody

22 charging anything?

23 MR. BAX: Tanielle Shurney.

24 THE COURT: Is it just to hold the room?

25 MR. BAX: No, it does not hold the room, it

1 purchases the room.

2 MR. HUTTON: It was for \$198.79.

3 MR. BAX: After that Scott's Splash Lagoon gets a
4 call from a lady in Ohio who says what's this charge on my
5 credit card.

6 THE COURT: When is this?

7 MR. BAX: About a week later they get a call, what
8 is this charge on my credit card, I see it on my computer.

9 MR. HUTTON: The reservation is made on June 25th,
10 your Honor.

11 MR. BAX: And then the next thing what happens is
12 Scott's Splash Lagoon gets a call from an Ohio police
13 department, from an Ohio police officer, who says we're
14 investigating a stolen credit card, use of a credit card
15 without authorization. In what jurisdiction are you.
16 Pennsylvania State Police. Okay. The officer calls back and
17 says when Tanielle Shurney shows up, call this number. And
18 Scott's Splash Lagoon people called the number.

19 THE COURT: There isn't much of a delay between
20 booking the reservation and her actually showing up.

21 MR. BAX: So the Scott's people follow the direction
22 of the police, call the state police and she's arrested.
23 Apparently, she also has money in her pocket. Apparently --

24 I'll just leave it at that. That's the gist of it.

25 THE COURT: Are any of those facts, alleged facts,

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1 as laid out there, do you dispute that or is that pretty much

2 what you understand happened as well?

3 MR. ADAMS: The general understanding from the

4 plaintiff's standpoint is that Ms. Shurney asked -- Tracy

5 Smith, who is the woman we referred to, to make a reservation.

6 She was to go with Tracy Smith's children and Ms. Shurney's

7 children to Splash Lagoon. That, in fact, Ms. Shurney was

8 working at the time the reservations were made by Tracy Smith.

9 It was my client's intention to pay for the room. She --

10 THE COURT: Just to roll the tape back -- was your

11 client, you say she was actually on the telephone talking to

12 these folks?

13 MR. BAX: The woman identified herself as Tanielle

14 Shurney.

15 THE COURT: Did your client make the call?

16 MR. ADAMS: No. Obviously, we have some disputed

17 facts with the jury. Those calls were made by Tracy Smith. In

18 our initial disclosures we provided that information.

19 THE COURT: I'm farther down the road than I need to
20 get here, just so I'm clear. Assuming only for the sake of
21 discussion, and there may be other material issues of fact in
22 dispute floating around out there that I'm not aware of, maybe
23 you folks are, be that as it may. If demonstrably it was a
24 stolen credit card, just for purposes of our discussion, and if
25 indisputably she checked in, meaning your client, utilizing a

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1 stolen credit card, why for heaven's sake wouldn't that be
2 cause to arrest her?

3 MR. ADAMS: She did not utilize a credit card, that
4 is the most important factor, she did not make the reservation.
5 She provided all the information, gave them her driver's
6 license with all the information. Signed her real name. And
7 explained as soon as Trooper Pierce pulled into --

8 THE COURT: What did she say?

9 MR. ADAMS: She did not make the reservation, I did
10 not use a stolen credit card.

11 THE COURT: This isn't serendipity from heaven,

12 somebody had to pay for her room?

13 MR. ADAMS: That's another disputed point here. For
14 purposes of reservation holding, you need to have a credit
15 card, that's her understanding. Now, it's the defendants'
16 understanding that for some reason that's not the case. That
17 will be --

18 MR. BAX: There is no dispute about that, your
19 Honor. The credit card to charge the room is paid for at that
20 time. Now, that might not be your client's understanding, but
21 as a point of fact --

22 MR. ADAMS: That's a most unusual policy.

23 THE COURT: I'm not so interested about the
24 policies, as to trying to streamline the facts here as you
25 folks go forward on discovery as to what really is or is not in

1 dispute. My question is, once again -- let me just walk it
2 through this way. This is just your understanding of what your
3 client may or may not say at deposition or otherwise may be
4 something else. But your client decides to take what, a couple
5 kids with her?

6 MR. ADAMS: Her children and also the children of
7 Ms. Tracy Smith. Who made the reservation.

8 THE COURT: Tracy Smith, it's your understanding,
9 was the individual who physically made the reservation by
10 making the phone call, is that it?

11 MR. ADAMS: Yes.

12 THE COURT: And is it your understanding and was
13 your client present when that was done?

14 MR. ADAMS: The first time I'm getting that
15 information was through the disclosures provided by the
16 defendant. That is a fact in dispute. My understanding is,
17 although, there were two phone calls, was my client was at work
18 at least for one of the reservations, I believe she worked as
19 an intake worker at Chase Manhattan.

20 THE COURT: In any event, whether she was there or
21 not, did your client understand that Ms. Smith would be making
22 a reservation on her behalf?

23 MR. ADAMS: Yes.

24 THE COURT: Would Ms. Smith be traveling with her as
25 well?

1 MR. ADAMS: She initially was going to go with her,
2 but only her kids ended up going. The reason for Ms. Smith not
3 going, I'm not real clear.

4 THE COURT: All right. In any event, did Ms. Smith
5 provide a credit card number when she made the phone call?

6 MR. ADAMS: My understanding is that Ms. Smith made
7 the phone call to reserve the rooms because there was a special
8 where I think you could pack the room with kids if you wanted
9 for \$89, and that would include Splash Lagoon access.

10 THE COURT: Finally, and this will all shake itself
11 out, is it your understanding that Ms. Smith did or did not
12 represent to be Tanielle Shurney when she was on the phone?

13 MR. ADAMS: Clearly not. Clearly not. What
14 happened was my client got out of jail, of course, the first
15 thing she did, because she was quite upset, was confront Ms.
16 Smith about that. That's where there's a big dispute, as to
17 Ms. Smith -- my client is saying she didn't use the credit
18 card, that is what she did in fact say to my client.

19 MR. BAX: And this Tonya Traylor is not related to
20 or know any of these individuals.

21 THE COURT: Has Ms. Smith been prosecuted?

22 MR. BAX: I don't know.

23 MR. ADAMS: No.

24 MR. BAX: The officer from the Streetsboro Police

25 Department will be able to tell what they decided to do. I

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1 don't know if she was or was not.

2 MR. ADAMS: Of course, in my narrative, one of the

3 things obviously that should have happened here is that if

4 Trooper Pierce would have simply taken the information,

5 conducted an investigation, and instead of just not believing

6 my client and arresting her in the parking lot in front of the

7 kids and throwing her in jail for a week, we wouldn't be here.

8 That basically is where we're at. There is a duty to

9 investigate. If they would have, because I did the preliminary

10 hearing, that's one of the things I presume these individuals

11 here were not aware of. The only reason I got this case is it

12 came to me from the public defender and went to Judge Dwyer,

13 they call him District Judge Dwyer. Obviously, the people from

14 Splash Lagoon was there, Trooper Pierce was there, and we went

15 through the whole thing. They dismissed the charge. That was

16 basically it.

17 THE COURT: All right. I now know more than I did

18 before. We'll get out a scheduling order on this thing.

19 MR. HUTTON: Your Honor, the credit card history for

20 Ms. Shurney, we've asked for authorization over two months ago.

21 Part of the claim is I don't have credit cards when the

22 reservations were made. Our information is the plaintiff made

23 the reservation. Handed it to her sister. If there was in

24 fact a third party she handed it to and in fact she did make a

25 reservation herself falsifying the identification on the person

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1 who gives a false credit card. We want to find out Ms.

2 Shurney's credit card history to see if in fact she had a

3 credit card she could have placed a reservation on.

4 MR. ADAMS: How do you know there is a third party?

5 MR. HUTTON: Your client claims she handed it to

6 someone else, I don't know if that's true or not.

7 MR. ADAMS: We never had --

8 MR. HUTTON: Mr. Adams, I'm speaking now.

9 THE COURT: I'm speaking, hang on a second. I don't

10 mind if you argue, but he can't get this down if you're talking

11 over each other.

12 MR. HUTTON: I'm sorry.

13 THE COURT: What's your theory as to why you need

14 her credit card history?

15 MR. HUTTON: She claimed, when the reservations were

16 made, she needed a credit card, she didn't have a credit card,

17 I'm going to get it from my cousin. That's where the credit

18 card number came from. Now, if she has a credit card, then

19 this whole thing would be part of a conspiracy in making a

20 false claim. I think it's relevant to show whether or not she

21 in fact had a credit card, that when she made the phone call,

22 she could have put it on her account. If she has a card --

23 THE COURT: It's no less a crime --

24 MR. HUTTON: It's evidence of a crime.

25 MR. BAX: Your Honor, at the reservation center, and

1 I don't want to overstate anything, at the reservation center

2 there was a representation made by a woman who identified

3 herself as Tanielle Shurney, to the effect that I don't have a
4 credit card, I'll put my sister on, cousin, whomever, I'll put
5 her on the line or have her give you a call. And so since the
6 use of a credit card is one of the material facts in this case,
7 Tanielle Shurney's card ownership would be relevant to
8 impeaching her credibility as to a number of different things.
9 If she told the people she doesn't have a credit card, but then
10 she does --

11 THE COURT: Maybe this will simplify it. Do you
12 know if she has a credit card?

13 MR. ADAMS: My indication from her is that she
14 didn't. I agree with counsel that in fact if a call was made
15 that in fact a third party had to make a reservation with a
16 credit card, but she didn't have a credit card. I disagree
17 with counsel here in the case that my client then handed a
18 credit card to somebody.

19 THE COURT: In any event, let's cut to the chase.
20 You want an authorization so you can look at the credit card
21 history up to the relevant time -- and according to you,
22 represented that she didn't have a card, is that right?

23 MR. HUTTON: Yes, your Honor.

24 THE COURT: Well, is there any argument about that?

25 MR. HUTTON: He wouldn't give the authorization

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1 back.

2 MR. ADAMS: The authorization was for all of her --

3 basically, I don't have a copy with me, but it's a general

4 authorization for all of her finances and business background.

5 MR. HUTTON: You never responded to the request.

6 MR. ADAMS: We hadn't gotten the discovery schedule.

7 THE COURT: Let me just head off at the pass a

8 discovery dispute, I can do it right now, it's relevant, in my

9 opinion.

10 MR. ADAMS: I agree.

11 THE COURT: Execute an authorization.

12 MR. ADAMS: We'll execute an authorization providing

13 him to her credit card information. As the authorization was

14 proffered --

15 THE COURT: That's what you're primarily interested

16 in on this point, he'll tailor it down to that --

17 MR. ADAMS: I have no problem with that.

18 THE COURT: Okay, anything else. Mr. Bareford,

19 you're uncharacteristically quiet here today.

20 MR. BAREFORD: Sir, just the way the judge sort of
21 identified the real issue, Trooper Pierce agrees that the issue
22 is not whether or not -- a legal justification or an
23 explanation in the extenuation or police investigation of the
24 underlying charge of credit card fraud. Fraud is only relevant
25 if there existed probable cause at the time of the offense.

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1 Trooper Pierce continues to assert that there clearly was.

2 MR. ADAMS: To head off perhaps another issue then.

3 Trooper Pierce did indicate at the preliminary hearing that
4 this was not the first time that he had been subjected to
5 litigation and so we'll be sending some information requesting
6 his personnel file and any other aspects responsive to that.

7 THE COURT: All right, we'll cross that bridge when
8 we get to it. All right, thank you, counsel.

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10 (Whereupon, at 9:28 a.m., the proceedings were
11 concluded.)

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1 C E R T I F I C A T E

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4 I, Ronald J. Bench, certify that the foregoing is a

5 correct transcript from the record of proceedings in the

6 above-entitled matter.

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11 Ronald J. Bench

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